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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ARMANDO VILLANUEVA and
HORTENCIA SAINZ, individually and
as successor in interest to Pedro
Villanueva, deceased, and FRANCISCO
OROZCO, individually,

Plaintiffs,

vs.

STATE OF CALIFORNIA; JOHN
CLEVELAND; RICH HENDERSON;
and DOES 1-10, inclusive,

Defendants.

Case No. 8:17-cv-01302 JLS (KESx)

*Assigned to the Honorable District
Court Judge Josephine L. Staton*

**SUPPLEMENTAL SEPARATE
STATEMENT IN SUPPORT OF
PLAINTIFFS' OPPOSITIONS TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT
FOLLOWING THE AUGUST 6,
2018 DEPOSITION OF
DEFENDANTS' POLICE
PRACTICES EXPERT CLARENCE
CHAPMAN**

Date: September 7, 2018
Time: 2:30 p.m.

1 Pursuant to Local Rule 56-2, Plaintiffs Francisco Orozco, Hortencia Sainz,
2 and Armando Villanueva respectfully submit the instant Supplemental Separate
3 Statement of Plaintiffs' Additional Material Facts following their recent receipt of
4 the transcript of the August 6, 2018 deposition of Defendants' police practices
5 expert Clarence Chapman. Under Federal Rules of Civil Procedure, Rule 56(d)—
6 When Facts Are Unavailable to the Nonmovant—If a nonmovant shows by affidavit
7 or declaration that, for specified reasons, it cannot present facts essential to justify
8 its opposition, the court may: (1) defer considering the motion or deny it; (2) allow
9 time to obtain affidavits or declarations or to take discovery; or (3) issue any other
10 appropriate order.

11 Plaintiffs are filing the relevant pages of the transcript of the deposition of
12 Clarence Chapman concurrently herewith as "Exhibit 12" to the supplemental
13 declaration of Renee V. Masongsong, also filed concurrently herewith.

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17 DATED: August 14, 2018

LAW OFFICES OF DALE K. GALIPO

18 By: /s/ Renee V. Masongsong
19 Dale K. Galipo
20 Renee V. Masongsong
21 Attorneys for Plaintiff Francisco
22 Orozco

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28 DATED: August 14, 2018

KIESEL LAW LLP

By: /s/ Bryan Garcia
Paul R. Kiesel
Bryan Garcia
Attorneys for Plaintiffs Hortencia Sainz
and Armando Villanueva

**SUPPLEMENTAL SEPARATE STATEMENT IN SUPPORT OF
PLAINTIFFS' OPPOSITIONS TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, FOLLOWING THE AUGUST 6, 2018
DEPOSITION OF DEFENDANTS' POLICE PRACTICES EXPERT
CLARENCE CHAPMAN**

No.	Plaintiffs' Additional Material Fact	Supporting Evidence
231.	Defendants' police practices expert Clarence Chapman agrees that the use of firearms against moving motor vehicles is inherently dangerous and almost always ineffective.	Transcript of August 6, 2018 Deposition of Defendants' police practices expert Clarence Chapman, attached to the Supplemental Declaration of Renee V. Masongsong filed concurrently herewith as "Exhibit 12" ("Chapman Depo.") at 17:3-7
232.	Mr. Chapman agrees that a police officer who is threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or its occupants, allow the vehicle to pass, and utilize other tactical or investigative means to apprehend the suspect.	Exhibit 12 (Chapman Depo.) at 18:21-20:7, 20:16-21:3.
233.	Mr. Chapman agrees that Peace Officer Standards and Training ("POST") and basic police training teach that deadly force can	Exhibit 12 (Chapman Depo.) at 21:19-22:10.

1		only be used as a last resort, in the direst of	
2		circumstances, when no reasonable	
3		alternatives are available.	
4	234.	According to Mr. Chapman, police officers	(Exhibit 12 (Chapman
5		are trained to step out of the way rather than	Depo.) at 22:14-22, 72:13-
6		shooting at a moving motor vehicle. Along	18 and 72:19-73:1.
7		these lines, Mr. Chapman recalls that Sgt.	
8		Cleveland testified that he felt the quickest	
9		way for him to get out of the Silverado was	
10		to go to the west curb, and that Sgt.	
11		Cleveland was able to get to the west curb	
12		within a couple seconds.	
13	235.	Mr. Chapman agrees that shooting at the	Exhibit 12 (Chapman
14		driver of a moving motor vehicle carries the	Depo.) at 81:22-82:6,
15		potential of incapacitating the driver, and	82:23-25 and 84:3-11, 85:3-
16		anything that happens past that	8.
17		incapacitation is accidental and	
18		unintentional on the part of the driver.	
19		Along these lines, Mr. Chapman considered	
20		that Pedro Villanueva (the driver of the	
21		Silverado) may have been incapacitated by	
22		the shots while he was operating the	
23		Silverado.	
24	236.	According to Mr. Chapman, a subjective	Exhibit 12 (Chapman
25		fear is insufficient to justify the use of	Depo.) at 23:10-17.
26		deadly force.	

1	237.	According to Mr. Chapman, an overreaction in using deadly force is considered excessive force.	Exhibit 12 (Chapman Depo.) at 23:18-24:6.
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4	238.	According to Mr. Chapman, police officers are trained that they cannot shoot at a vehicle for fleeing. Also according to Mr. Chapman, under the facts of this case, the defendant officers could not shoot at the Silverado or its occupants for fleeing.	Exhibit 12 (Chapman Depo.) at 24:23-26:4, 39:25-40:10.
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10	239.	Mr. Chapman testified at his deposition that the California Highway Patrol (“CHP”) policy specifically states that thou shalt not shoot at fleeing vehicles.	Exhibit 12 (Chapman Depo.) at 40:7-10.
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14	240.	According to Mr. Chapman, police officers are trained that in order to justify shooting at a moving vehicle, there would need to be an immediate threat of death or serious bodily injury and no reasonable alternative such as stepping out of the vehicle’s path. Mr. Chapman’s understanding is that the CHP policy is consistent with this training.	Exhibit 12 (Chapman Depo.) at 89:8-12 and 29:23-30:25.
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22	241.	Mr. Chapman agrees that there was enough room between the west curb and the undercover CHP vehicle for the Silverado to pass by the CHP vehicle without striking it.	Exhibit 12 (Chapman Depo.) at 61:17-62:7.
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26	242.	Mr. Chapman testified at his deposition that under the facts of this case, if Sgt.	Exhibit 12 (Chapman Depo.) at 77:9-78:23, 88:1-
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1		Cleveland were not about to be struck by	89:12, 97:16-98:12, 102:8-
2		the Silverado and Sgt. Cleveland was able	12, 102:19-25.
3		to get out of the path of the Silverado, then	
4		it was inappropriate for Sgt. Cleveland to	
5		shoot.	
6	243.	According to Mr. Chapman, if an officer	Exhibit 12 (Chapman
7		can get out of the path of a moving motor	Depo.) at 101:23-102:25.
8		vehicle, then the officer should not shoot.	
9	244.	Mr. Chapman agrees that Sgt. Cleveland	Exhibit 12 (Chapman
10		was to the passenger side of the Silverado	Depo.) at 80:6-10.
11		when he fired his two shots.	
12	245.	According to Mr. Chapman, if an officer is	Exhibit 12 (Chapman
13		standing to the side of a vehicle where he	Depo.) at 98:8-12.
14		can see a passenger in the front seat, then	
15		that means that the vehicle is beyond the	
16		officer and is not threatening the officer.	
17	246.	Mr. Chapman also testified that when Sgt.	Exhibit 12 (Chapman
18		Cleveland was moving to the west curb, the	Depo.) at 86:20-87:7,
19		Silverado was moving in the opposite	87:17-25.
20		direction, away from Sgt. Cleveland.	
21	247.	According to Clarence Chapman, the	Exhibit 12 (Chapman
22		ultimate issue in this case—whether Sgt.	Depo.) at 100:22-101:5.
23		Cleveland was in an immediate defense of	
24		life situation at the time of the shots—is a	
25		question for the trier of fact.	